

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**CLAY COUNTY COMMISSION,  
APPELLANT**

**vs.**

**NICOLE GALLOWAY, AUDITOR OF THE STATE OF MISSOURI,  
RESPONDENT**

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DOCKET NUMBER WD83580

DATE: DECEMBER 29, 2020

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Appeal from:

The Circuit Court of Cole County, Missouri  
The Honorable Jon E. Bettem, Judge

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Appellate Judges:

Division One: Thomas N. Chapman, Presiding Judge, Mark D. Pfeiffer, Judge and W. Douglas Thomson, Judge

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Attorneys:

William J. Hatley, for Appellant

Joel E. Anderson, for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**CLAY COUNTY COMMISSION, APPELLANT,**

**v.**

**NICOLE GALLOWAY, AUDITOR OF THE STATE OF MISSOURI, RESPONDENT.**

WD83580

Cole County

Before Division One Judges : Thomas N. Chapman, Presiding Judge, Mark D. Pfeiffer, Judge,  
and W. Douglas Thomson, Judge

This matter involves the issuance of a subpoena for closed session minutes of the Clay County Commission by Nicole Galloway, Auditor of the State of Missouri. In an amended petition seeking declaratory and injunctive relief, the Commission claims the minutes contain confidential attorney-client communications. The Commission appeals the trial court's judgment granting the Auditor's motion to dismiss the Commission's amended petition for failure to state a claim upon which relief may be granted. On appeal, the Commission does not challenge the trial court's dismissal of its amended petition but, instead, claims that the trial court erred in including language in its judgment which they claim could be construed as ruling on the substantive merits of the Auditor's subpoena.

**AFFIRMED.**

**Division One holds:**

The trial court's dismissal of the action was properly based on a ground asserted in the Auditor's motion to dismiss. The trial court's judgment did not adjudicate the merits of the Commission's objections to the subpoena. Instead, the trial court ruled that such objections should be addressed in an action to enforce a subpoena. At the time of such an enforcement action, *any* appropriate challenge to the subpoena may be made. Accordingly, the Commission is not foreclosed from challenging the authority of the Auditor to obtain specific records in future proceedings.

**Opinion by: W. Douglas Thomson, Judge**

Date: December 29, 2020

<p><b>This summary is <i>UNOFFICIAL</i> and should not be</b></p>
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